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ICS-83-0812
15 July 1983

MEMORANDUM FOR: Director of Central Intelligence
VIA: Deputy Director of Central Intelligence
FROM:
Director, Intelligence Community Staff
SUBJECT: Letter to Judge Clark re NSDD 84

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1. Action Requested: That you sign the attached letter to Judge Clark, expressing concern that the DCI's authority for SCI security policy is being eroded through efforts of the NSDD 84 working group on standardized nondisclosure agreement forms, and proposing that the DCI continue to be the authority for SCI nondisclosure forms and procedures.

2. Background: After a discussion of NSDD 84 implementation at the 5 July 1983 IC Staff meeting, the DDCI directed that steps be taken to safeguard the position of the DCI regarding security policy for SCI.

3. The implementation of NSDD 84 raises concerns about the role of the Director of Central Intelligence in setting standards for the protection of intelligence data, sources and methods.

4. Although the DCI Security Committee enthusiastically supported adoption of the Willard Report, the manner in which the document was to be implemented could not have been foreseen. The final draft of NSDD 84 did not contain two provisions which were in the published version. These were the requirement to include a prepublication review clause for collateral material in the SCI nondisclosure agreement and the assignment to the Information Security Oversight Office (ISOO) of the responsibility for formulating standardized nondisclosure agreement forms.

5. For many years, the DCI or specific SCI program managers prescribed the secrecy agreements covering access to SCI. In 1981, the DCI promulgated a nondisclosure agreement, Form 4193, deemed by the Justice Department to be "legally sufficient" and including an explicit prepublication review clause. It has since been in use throughout the Intelligence Community and has been signed by thousands of SCI-approved individuals. The National Security Agency found it necessary to combine the SCI agreement with an Agency secrecy agreement, but incorporated the essentials of Form 4193 into its form.

6. Immediately after issuance of NSDD 84, the Chairman, SECOM, advised the Director of IS00 that the DCI considered Form 4193 the appropriate form for SCI agreements. Mr. Garfinkel advised that he saw no reason why Form 4193 should not be the "standardized form" for SCI.

7. The inclusion of a prepublication review requirement for collateral material in the SCI nondisclosure agreement is the wedge that has permitted the proposed insertion of, inter alia, a specific provision, "However, I am not required to submit for review any such materials that exclusively contain information lawfully obtained by me, and to be published, at a time when I have no employment, contract or other relationship with the United States Government." The purpose of the clause ostensibly is to avoid problems for journalists who are appointed to Federal positions and then return to their former trade.

8. The leadership of the ad hoc group for secrecy agreements indicate that a compromise has been reached with State Department representatives to ease the prepublication review clause. They also express concern that too strong an agreement will bring an avalanche of manuscripts for review that will be impossible to handle.

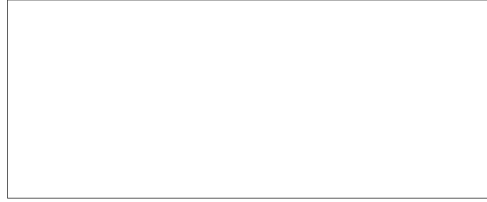
9. They point out that any agency wishing to use a more stringent agreement may apply to the Director, IS00, for a waiver. The implication of this is that the DCI, who heretofore has made the rules for SCI for the Intelligence Community and the U.S. Government, will not do so in this particular area. In fact, if he wishes to impose more stringent rules on his own agency, he will first have to get permission of the Director, IS00. This seems to transfer from the DCI to the IS00 a substantial portion of his statutory responsibility for the protection of intelligence sources and methods.

10. On balance, the draft SCI nondisclosure agreement at this stage appears to be weaker than Form 4193, but not unacceptably so. The principal problems are the perception of the DCI's role in protecting sources and methods and the reduction of that role by the manner in which NSDD 84 is implemented.

11. The attached proposed letter to the Assistant to the President for National Security Affairs is intended to explain DCI opposition to relinquishing any authority for SCI security to the Director, IS00, or to the NSDD working group on standardized forms. It expresses your intention to retain the authority for the SCI nondisclosure agreement and the current mechanism for revising it.

12. Recommendation: That you sign the attached letter.

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Attachment

SUBJECT: Letter to Judge Clark (ICS-83-0812)

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